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CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RENEE PINZ,

Plaintiff,

v.

BATH AND BODY WORKS,
INC., and DOES 1 through
20, inclusive,

Defendants.

) CV 03-2160 RSWL (CWX)

**ORDER DENYING
DEFENDANT'S MOTION FOR
JUDGMENT ON THE
PLEADINGS FOR FAILURE
TO STATE A CLAIM UPON
WHICH RELIEF CAN BE
GRANTED**

Presently before the Court is Defendant Bath and Body Works, Inc.'s Motion for Judgment on the Pleadings. After considering the papers and arguments filed in support of and in opposition to this Motion, the Court hereby **DENIES** Defendant's Motion.

As a preliminary matter, Defendant asks this Court to take Judicial Notice of documents filed in this case in state court. This Court **GRANTS** this Request.

THIS CONSTITUTES NOTICE OF ENTRY
OF THIS DOCUMENT
AS REQUIRED BY FRCP, RULE 7(d)

1 Under California law, the statute of limitations does
2 not begin to run merely because a plaintiff has knowledge of
3 an injury and its cause. Ward v. Westinghouse Canada, Inc.,
4 32 F.3d 1405, 1407 (9th Cir. 1994). Although a plaintiff
5 has determined the factual cause of her injuries, she is not
6 on notice until she is or should be aware that the cause was
7 due to the defendant's wrongdoing. Id. at 1408.

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9 Plaintiff knew at the date of the fire that the
10 decedent died from a fire caused by candles placed on the
11 countertop. However, it is not clear from the face of the
12 pleadings that Plaintiff had reason to know of Defendant's
13 involvement in the fire before the site investigation.
14 Therefore, under California law, this Court must assume for
15 purposes of Judgment on the Pleadings that the statute did
16 not begin to run until January 24, 2003, and thus that
17 Plaintiff's First Amended Complaint was filed within the
18 limitations period.

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20 Although the question of whether Plaintiff filed within
21 the limitations period may properly be the subject of a
22 later motion, it cannot be resolved on the pleadings. This
23 Court **DENIES** the Motion for Judgment on the Pleadings on
24 this ground.

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26 Accordingly, Plaintiff also did not need to substitute

1 Defendant for an original "Doe" defendant to meet the
2 limitations period. This requirement is only significant if
3 Plaintiff wished the benefit of the "relation back" doctrine
4 to avoid the statute of limitations. California Code Civ.
5 Proc. § 474; See also Ingram v. Superior Court for County of
6 Sutter, 98 Cal. App. 3d 483 (1979). Plaintiff does not
7 argue that she is entitled to have her amended complaint
8 "relate back" for limitations purposes. This Court **DENIES**
9 the Motion for Judgment on the Pleadings on this ground, as
10 well.

11
12 Finally, Defendant is correct that a District Court may
13 strike false or sham pleadings. See Ellingson v. Burlington
14 Northern, Inc., 653 F.2d 1327, 1329-1330 (9th Cir. 1981).
15 This includes allegations in a pleading which are
16 inconsistent with those in a prior pleading. Bradley v.
17 Chiron Corp., 136 F.3d 1317 (Fed. Cir. 1998).

18
19 However, an inconsistent allegation is not
20 automatically a "sham." Although the allegations of the
21 First Amended Complaint contradict those of the original
22 ///

23 ///
24 ///
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1 complaint, there is no indication that they constitute a
2 "false" or "sham" pleading. This Court therefore **DENIES** the
3 Motion for Judgment on the Pleadings on this basis, as well.

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5 **IT IS SO ORDERED.**

RONALD S.W. LEW

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7 RONALD S.W. LEW
United States District Judge

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DATED: 8-25-03
(orders\pinz.jonp\w)

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